

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BLAKE CHAPPELL,

Petitioner,

v.

B. KIEBLER, Warden,

Respondent.

No. 2:22-cv-0259 WBS AC P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket No. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 2, 2022, the Magistrate Judge issued findings and recommendations herein which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within fourteen days. (Docket No. 8.) Petitioner has filed objections to the findings and recommendations. (Docket No. 9.)


In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis. The court notes that petitioner, in his objections, has filed a decision from the Sacramento Superior Court denying his state habeas petition. However, proper exhaustion

1 requires presenting claims to the state's highest court either on direct or collateral review. See
2 Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir.
3 1985). Further, state court exhaustion has to be completed before a federal habeas petition is
4 filed. Picard, 404 U.S. at 275-76; Poyson v. Ryan, 879 F.3d 875, 894 (9th Cir. 2018). Here, there
5 is no indication that plaintiff has presented his claims to the state's highest court. Nor did he
6 complete state court exhaustion before filing his federal habeas petition.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The findings and recommendations filed May 2, 2022 (ECF No. 8), are ADOPTED in
9 full;
- 10 2. Petitioner's motion to proceed in forma pauperis (ECF No. 5) is DENIED as moot;
- 11 3. The petition is DISMISSED without prejudice, and
- 12 4. The court DECLINES to issue the certificate of appealability referenced in 28 U.S.C. §
13 2253.

14 Dated: July 14, 2022


15 WILLIAM B. SHUBB
16 UNITED STATES DISTRICT JUDGE
17
18
19
20
21

22 chap0259.804hc
23
24
25
26
27
28